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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Part 90 of the
Commission's Rules to Expand
Coordination of the 800 MHz
General Category Channels

PR Docket No. 92-209

RM-7965

ORIGINAL
FILE

To: The Commission

COMMENTS
OF THE
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.

The National Association of Business and Educational Radio, Inc. ("NABER"), pursuant to Section 1.415 of the Commission's Rules and Regulations, 47 C.F.R. § 1.415, hereby submits its Comments in response to the Notice of Proposed Rule Making ("Notice") adopted by the Commission in the above-captioned proceeding.¹

I. BACKGROUND

NABER is a national, non-profit, trade association headquartered in Alexandria, Virginia, that represents the interests of manufacturers, vendors and service providers as well as large and small businesses that use land mobile radio communications as an important adjunct to the operation of their businesses and that hold thousands of licenses in the private land mobile radio services. NABER has five membership sections representing Users, Private Carrier Paging licensees, Radio Dealers, Technicians and Specialized Mobile Radio operators. NABER

¹ Notice of Proposed Rule Making (FCC 92-430), PR Docket No. 92-209, 57 FR 47601 (October 19, 1992).

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comprises over 6,000 of these businesses and service providers holding thousands of licenses in the private land mobile services.

For the past 19 years, NABER has been the recognized frequency coordinator in the 450-470 MHz and 470-512 MHz bands for the Business Radio Service. NABER is also the Commission's recognized frequency coordinator for the 800 MHz and 900 MHz Business Pools, 800 MHz "old" conventional channels for Business eligibles and conventional SMR Systems, and for the 929 MHz paging frequencies. In its Report and Order in PR Docket No. 83-737, the Commission designated NABER as the frequency coordinator for all Business Radio Service frequencies below 450 MHz and, in a joint effort with the International Municipal Signal Association ("IMSA") and the International Association of Fire Chiefs ("IAFC"), the Special Emergency Radio Service frequencies.

In this Notice, the Commission proposes to permit applicants seeking to license conventional Specialized Mobile Radio ("SMR") systems operating on General Category channels the option of obtaining the required frequency coordination from any of the three recognized frequency coordination committees for frequencies above 800 MHz: NABER; the Industrial Telecommunications Association, Inc. ("ITA," formerly known as the Special Industrial Radio Service Association, Inc.); and the Associated Public-Safety Communications Officers ("APCO").

Currently, NABER is the recognized frequency coordinator for applicants seeking conventional SMR systems utilizing General Category frequencies, as a result of the Commission's finding that

NABER was representative of the SMR industry. However, applications seeking to expand an existing trunked SMR system using General Category channels may obtain frequency coordination from any one of the three 800 MHz frequency coordinators. This is based upon the finding that, since trunked SMR applicants were seeking intercategory sharing, and not requesting channels in the applicants pool (the trunked SMR Pool), the applicant could use any of the three (3) coordinators of the intercategory pool.²

The Commission has initially determined that the distinction in the coordination procedure between conventional and trunked SMR systems licensed on General Category channels is not justified. Further, the Commission discerns no public benefit derived from the different treatment of applications based on the type of system employed or to be operated.

I. COMMENTS

NABER supports the Commission proposal to expand the number of frequency coordinators which may coordinate conventional SMR applications seeking recommendations for 800 MHz General Category channels, but only if the Commission broadens the scope of this rule making proceeding. NABER urges the Commission to permit any of the three recognized 800 MHz frequency coordinators to coordinate any application seeking to operate a conventional system with General Category channels regardless of the applicant's eligibility. Expanding the coordination options in this manner

² 47 C.F.R. § 90.621(g)(3)(iv). See also 47 C.F.R. § 90.609(d).

will equalize the frequency selection process for all the applicants, not just those applicants in the SMR service. However, should the Commission refuse to expand the proposal to cover all 800 MHz General Category applications, NABER would not support its extension only to conventional SMR applicants.

The Commission determined in 1986 and again in 1990 that coordination of the 800 MHz frequencies designated for conventional operation should be performed by the frequency coordinator that is representative of the service in which the applicant asserts eligibility.³ The Commission now finds that an applicant for a General Category channel for conventional use in the SMR service should be permitted to have the same coordination options available as the applicant seeking a General Category channel for trunked operations in the SMR service. However, the Commission fails to discuss its initial decision that a representative coordinator is no longer necessary for applications contrary to the Commission's prior decisions. NABER believes that the Commission must first resolve the explicit direction of Congress to recognize only representative frequency advisory committees before permitting non-representative committees to issue frequency coordinations.⁴

³ Report and Order (FCC 86-143), Frequency Coordination in the Private Land Mobile Radio Services, PR Docket No. 83-737, 103 FCC 2d 1093, para. 70 (1986) ("Frequency Coordination Report and Order"); Report and Order, (FCC 90-234), Trunking in the Private Land Mobile Radio Services for More Effective and Efficient Use of the Spectrum, PR Docket No. 87-213, 5 FCC Rcd 4016 (1990) ("General Category Report and Order").

⁴ This issue was specifically raised by NABER in PR Docket No. 88-548, and has not yet been addressed in that proceeding by the Commission.

Should the Commission, after consideration and discussion of this issue, find that (1) there should be no different coordination procedures for applicants seeking General Category channels based on the type of system employed or proposed to be operated, and (2) a representative frequency advisory committee is unnecessary for coordination of applications for the 800 MHz General Category channels, NABER believes that the Commission must expand the coordination options to all applicants seeking to use General Category channels for conventional operations. NABER submits that the Commission cannot logically extend its argument to expand coordination options for SMR conventional systems without an extension to all conventional systems regardless of service eligibility. NABER, therefore, supports the Commission's action in this proceeding so long as the Commission adopts rules affecting the coordination procedures for all applications seeking General Category channels for conventional operations.

A. Background on Coordination of General Category Channels

Congress specifically authorized the Commission to utilize non-government advisory coordinating committees in the frequency assignment process for private land mobile radio and fixed services.⁵ Further, Congress encouraged the Commission to recognize those frequency coordinating committees for any given

⁵ 47 U.S.C. § 332(b). "[T]he Committee is convinced that frequency coordinating committees not only provide for more efficient use of the congested land mobile spectrum, but also enable all users, large and small, to obtain the coordination necessary to place their stations on the air." Communications Technical Amendments Act of 1982, Report 97-751, 97th Congress 2d Sess., § 20. p. 47 ("Report").

service which are most representative of the users of that service.⁶ Accordingly, prior to the Commission's certifying a particular frequency coordinating committee for a radio service, the Commission first determined whether the candidates seeking selection in that radio service were "representative of users in the radio service it proposed to coordinate,"⁷ with a "special emphasis ... placed on representativeness..."⁸

For the 800 MHz conventional frequencies (now classified as General Category channels⁹), NABER, ITA, and APCO each requested to be the recognized coordinator for these frequencies. The Commission determined that no one of three entities seeking recognition as a frequency coordinator for the conventional channels was representative of all the users. However, the Commission held that NABER, ITA, and APCO combined were representative of most of the users of these frequencies. Accordingly, the Commission recognized NABER, ITA, and APCO as frequency coordinators for the conventional frequencies.

Consistent with its decision to certify coordinators who were representative of the users of the service, the Commission required applicants to obtain frequency coordination from the coordinator who represented the category in which the applicant establish eligibility. NABER was certified to coordinate all Business use

⁶ Id.

⁷ See Frequency Coordination Report and Order.

⁸ Id. at fn. 17.

⁹ See General Category Report and Order.

applications, including conventional SMR use. APCO was certified to coordinate all Public Safety and Special Emergency use, and ITA certified to coordinate all Industrial and Land Transportation use.

In 1990, the Commission redesignated the 800 MHz conventional channels as General Category channels.¹⁰ The General Category channels could either be operated in a conventional mode or used to either expand a trunked system or create a trunked system from constructed conventional stations. In the final rules, the Commission, although requiring applications for trunked systems seeking to use General Category channels to be coordinated, permitted the applicant to chose one of three recognized category coordinators regardless of the underlying service eligibility of the applicant. Further, the Commission maintained its rule that coordination of conventional channels must be performed by the applicant's respective category coordinators,¹¹ and again recognized NABER as the coordinator for applicants seeking conventional SMR systems using General Category frequency pairs.¹²

**B. The Commission Must Treat All Applicants
for General Category Channels Equally**

The Commission has now initially concluded that there is no apparent reason to continue the distinction between coordination options for trunked and conventional SMR applicants seeking to use General Category channels. The Commission appears to see no

¹⁰ See General Category Report and Order.

¹¹ Id. at fn. 75.

¹² Id.

benefit to be gained by separate treatment of applicants for General Category channels based on the type of system employed or proposed. The Commission did not address or discuss the underlying issue of representativeness in the original certification of frequency coordination committees for these channels in this proposal to only expand the coordination options available to conventional SMR applicants.

NABER argues that Commission's reasoning to support the equalization of frequency coordination for applicants seeking conventional SMR systems and expanding trunked SMR systems with General Category channels should be applied to the coordination of any application for a General Category channel. The Commission currently permits an applicant to expand a trunked system with General Category channels (regardless of which service it is licensed) to select any one of the three recognized 800 MHz frequency coordinating committees. On the other hand, a entity seeking a conventional system using General Category frequencies may only use the coordinator in the service the applicant asserts eligibility. This applicant is placed at the same competitive disadvantage as the applicant seeking coordination of a conventional SMR system because of the inability to chose one of the three frequency coordinators. Similarly, NABER perceives no apparent benefit to be gained by the separate treatment of these non-SMR applicants based on type of system employed or proposed. The licensing of a General Category channel to a business user for conventional use does not foreclose its assignment to an out-of-

category user on a shared basis at a later time.¹³ Thus, the applicant gains no advantage by having the application coordinated by the frequency coordinator in which eligibility is asserted.

The Commission rationale for expanding the coordination options for conventional SMR applicants logically applies to extending the same benefits to all applicants seeking General Category channels for conventional use. All applicants in the other radio services need the same competitive advantages to secure spectrum for their internal business uses the same as conventional SMR applicants. Additionally, the Commission's expansion of the coordination of the General Category channels in this manner will further the Congressional mandate to "equalize the frequency selection process for all applicants...."¹⁴

¹³ A conventional channel does not become exclusive unless the channel has 70 or more mobiles operating on the system. 47 C.F.R. § 90.625.

¹⁴ Report at p. 47.

III. CONCLUSION

WHEREFORE, the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

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AND EDUCATIONAL RADIO, INC.

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